

ATTACHMENT X

CREDITS FOR
PERFORMANCE STANDARDS

**ATTACHMENT X
CREDITS and LIQUIDATED DAMAGES for PERFORMANCE
STANDARDS FAILURES**

TABLE OF CONTENTS

Section 1. General	X-1
Section 2. Credits for Failure to Meet Performance Standards (MCIIm)	X-2
Section 3. Delay Credits (MCIIm)	X-2
Section 2. Liquidated Damages For Specified Activities (NYNEX)	X-2
Section 3. NYNEX Performance Criteria for Liquidated Damages (NYNEX)	X-5
Section 4. Schedule of Liquidated Damages	X-6
Section 5. MCIIm Service Quality Criteria for Liquidated Damages	X-7

ATTACHMENT X

CREDITS and LIQUIDATED DAMAGES for PERFORMANCE STANDARDS FAILURES

Section 1 General

1.1 NYNEX shall satisfy all service standards, intervals, measurements, specifications, performance requirements, technical requirements and performance standards (collectively referred to herein as "Performance Standards") that are specified in this Agreement. In addition, NYNEX's performance under this Agreement shall provide MCI with the capability to meet Performance Standards that are at least equal to the highest level that NYNEX provides or is required to provide by law or its own internal procedures, whichever is higher. In the event that the Performance Standards specified in this Agreement are different than the standards or measurements that NYNEX provides or is required to provide by law or its own internal procedures, the highest Performance Standard shall apply.

1.2 NYNEX and MCI agree that delays in the provision of services and failures to meet the performance standards required by this Agreement may cause MCI to suffer damages. The credits set forth in Section 4 are to be liquidated damages.

1.3 [INTENTIONALLY LEFT BLANK]

1.4 [INTENTIONALLY LEFT BLANK]

1.5 [INTENTIONALLY LEFT BLANK]

1.6 [INTENTIONALLY LEFT BLANK]

1.7 NYNEX and MCI agree that remedies at law alone are inadequate to compensate MCI for failures to meet the performance standard requirements specified by this Agreement, failures to install or provision services in accordance with the Due Dates specified in this Agreement, or for failures to provide Subscriber Usage Data in accordance with this Agreement. MCI shall have the right to seek injunctive relief and other equitable remedies (in addition to remedies provided in this Agreement, at law and through administrative process) to require NYNEX: (i) to cause the service ordered by MCI to meet the Performance Standards specified by this Agreement; (ii)

install or provision service ordered by MCIIm within the Due Dates specified in this Agreement; and (iii) to provide Subscriber Usage Data in accordance with this Agreement.

Section 2 Credits for Failure to Meet Performance Standards (MCIIm)

NYNEX shall pay to MCIIm credits, or MCIIm may, at MCI's option, use such credits to offset charges due to NYNEX, for delays in provision of subscriber specific services required by this Agreement. Unless otherwise specified by MCIIm, performance against Performance Standards shall be measured on a monthly basis.

Section 3. Delay Credits (MCIIm)

3.1 Subscriber-Specific Services

3.1.1 In addition to any Liquidated Damages owed to MCIIm, if NYNEX does not satisfy any Performance Standard related to: (i) a deadline for the provisioning to MCIIm of Local Resale; (ii) a deadline for the provisioning of service or support functions related to Local Resale; or (iii) the delivery date(s) for error-free provisioning of Network Elements or Local Interconnection, NYNEX will be liable to MCIIm for a credit for each and every order for service that has been delayed or not properly completed in excess of the 80% threshold of delayed installations.

3.1.2 Credits shall be paid to MCIIm in parity with those NYNEX pays its own end users.

Section 2 Liquidated Damages For Specified Activities (NYNEX)

2.1 Certain Definitions. When used in this Section 2, the following terms shall have the meanings indicated:

2.1.1 "Specified Performance Breach" means the failure by NYNEX to meet the Performance Criteria for any of the three Specified Activities as defined below, for a period of three (3) consecutive calendar months.

2.1.2 "Specified Activity" means any of the following activities:

- (i) the installation by NYNEX of unbundled Links for MCIIm ("Unbundled Links Installation");

(ii) NYNEX's provision of interim Telecommunications Number Portability to MCIm; or

(iii) the repair of out of service problems for MCIm ("Out of Service Repairs").

2.1.3 "Performance Criteria" means, with respect to each calendar month during the term of this Agreement, the performance by NYNEX during each month of each Specified Activity shown in Sections 3.1 and 3.2 below, within the time interval shown in at least eighty percent (80%) of the covered instances, except as otherwise provided for in this Section 2.

2.2 Specified Performance Breach. In recognition of: (i) the loss of customer opportunities, revenues and goodwill which MCIm might sustain in the event of a Specified Performance Breach; (ii) the uncertainty, in the event of such a Specified Performance Breach, of MCIm having available to it customer opportunities similar to those opportunities currently available to MCIm; and (iii) the difficulty of accurately ascertaining the amount of damages MCIm would sustain in the event of such a Specified Performance Breach, NYNEX agrees to pay MCIm, subject to Section 2.4 below, damages as set forth in Section 2.3 below in the event of the occurrence of a Specified Performance Breach. Such payments will only apply after a minimum of two hundred fifty (250) unbundled Links are installed for MCIm in LATA 132.

2.3 Liquidated Damages. The damages payable by NYNEX to MCIm as a result of a Specified Performance Breach shall be subject to a sliding scale set forth in Section 4 for each Specified Performance Breach (collectively, the "Liquidated Damages"). MCIm and NYNEX agree and acknowledge that: (i) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of MCIm and NYNEX at the time of the negotiation and entering into of this Agreement, with due regard given to the performance expectations of each Party; (ii) the Liquidated Damages constitute a reasonable approximation of the damages MCIm would sustain if its damages were readily ascertainable; and (iii) MCIm shall not be required to provide any proof of the Liquidated Damages.

2.4 Limitations. In no event shall NYNEX be liable to pay the Liquidated Damages if NYNEX's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means: (i) a failure by MCIm to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule); (ii) any delay, act or failure to act by a customer, agent or subcontractor of MCIm; (iii) any Force Majeure Event; or (iv) such other delay, act or

failure to act as upon which the Parties may agree. If a Delaying Event (i) prevents NYNEX from performing a Specified Activity, then such Specified Activity shall be excluded from the calculation of NYNEX's compliance with the Performance Criteria, or (ii) only suspends NYNEX's ability to timely perform the Specified Activity, the applicable time frame in which NYNEX's compliance with the Performance Criteria is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

2.4.1 MCIIm agrees to meet the specific Performance Standards associated with quality of service requests specified in Section 5 in accordance with the percentages set forth in Section 3. Should MCIIm fail to meet these service quality standards during a period corresponding to that measured in calculation of Liquidated Damages payable by NYNEX to MCIIm, NYNEX will not be liable for the payment of any applicable Liquidated Damages for that time period.

2.5 MCI will not be precluded from seeking other forms of relief, including judicial injunctive relief and redress available in administrative procedures before the Commission pursuant to Section 1.7 of this Attachment X.

2.6 **Records.** NYNEX will endeavor to maintain complete and accurate records, on a monthly basis, of its performance under this Agreement of each Specified Activity and its compliance with the Performance Criteria. NYNEX shall provide to MCIIm such records in a self-reporting format on a monthly basis.

2.7 **Start Date.** NYNEX and MCIIm shall jointly agree on appropriate measurements for the enforcement of this Section 2 within ninety (90) days of the Effective Date of this Agreement. Performance monitoring and liquidated damages shall begin after the in-service requirements are met.

Section 3 **NYNEX Performance Criteria for Liquidated Damages (NYNEX)**

SPECIFIED ACTIVITY	PERFORMANCE INTERVAL DATE
3.1 Unbundled Link Installation	
a) New Link Installation:	
i) Orders for installation < 10 LINKS	5 business days
ii) Orders for installation > 10 LINKS	
Facilities Conformation	5 business days
If Available Facilities	
< 20 LINKS	10 business days from Facilities Confirmation
> 20 LINKS	negotiated interval*
b) "Hot Cutover" Installation	
i) Orders for installation < 10 LINKS	7 business days (11/01/96 to 3/31/97) 5 business days (4/1/97 and after)
ii) Orders for installation > 10 LINKS negotiated interval*	
3.2 Interim Number Portability Installation	
i) Orders for installation < 10 numbers	7 business days (11/01/96 to 3/31/97) 5 business days (4/1/97 and after)
ii) Orders for installation > 10 numbers	negotiated interval*
3.3 Out-of-Service Repairs	Less than 24 hours from NYNEX's Receipt of Notification of Out-of-Service Condition (*)(**)

* Subject to the following percentage limitations:

	11/1/96 thru 5/31/97	6/1/97 thru 12/31/97	1/1/98 thru 6/30/98	7/1/98 and thereafter
Zone 1 (Manhattan, south of 59 st.)	75%	75%	80%	80%
Zone 2 (LATA 132, outside Zone 1)	70%	75%	75%	80%
Zone 3 (Outside Zones 1 and 2)	70%	70%	70%	75%

**Excludes residence customers in single and two-family homes.

Section 4 Schedule of Liquidated Damages

I. Such liquidated damages payments shall apply only after a minimum of 250 links are installed for MCIm in New York.¹

II. Liquidated Damages Schedule:*

Links installed for MCIm in New York	Monthly Specified Activity Threshold	Liquidated Damages (per performance breach)
250 - 499	50	\$2,500
500 - 999	100	\$7,500
1,000 - 1,999	150	\$15,000
2,000 - 2,999	300	\$30,000
3,000 - 3,999	450	\$45,000
4,000 - 4,999	650	\$60,000
over 5,000	750	\$75,000

¹ Excludes unbundled link installation "misses" resulting from the provision of extended link service so long as installation of the link facilities themselves meet the performance intervals set forth in Attachment X.

*The minimum number of requested "specified activities" must meet or equal the threshold quantities shown in the table above per activity per month to qualify for the level of damages associated with the number of unbundled Links in service for MCI in LATA 132.

Section 5 MCI Service Quality Criteria for Liquidated Damages

1. New Unbundled Link Orders

1.0 ANI to MCI number, verification successful from DEMARC by NYNEX field technician.

1.1 All order information submitted by MCI is valid (e.g., street address, end user LCON, floor/unit number, cable pair assignment).

1.2 Customer (end user) available at appointed date.

1.3 Orders completed as submitted without cancellation after FOC.

2. Hot Cut Unbundled Link Orders

2.0 Verifiable MCI dial tone at POT bay testable by NYNEX through appropriate tie cable pair as provided by MCI on the service request.

2.1 Accurate account and end user information submitted on service request.

2.3 Accurate tie cable and pair assignment provided by MCI on service request.

2.4 Orders completed as submitted without cancellation after FOC.

EXHIBIT 9



Curtis L. Groves
Senior Attorney
Public Policy
New York/New England Region

1133 19th Street NW
Washington, DC 20036
202 736 6160
Fax 202 736 6242
Curtis.Groves@wcom.com

April 11, 2002

VIA EMAIL AND OVERNIGHT COURIER

Sandra Dilorio Thorn, Esq.
Vice President and General Counsel, NY and CT
Verizon New York Inc.
1095 Avenue of the Americas
New York, NY 10036
sandra.d.thorn@verizon.com

Re: MCImetro Access Transmission Services New York Account No.
212 DNY 0132 M00

Dear Sandra:

I am writing to bring to your attention Verizon New York, Inc.'s ("Verizon") failure to pay reciprocal compensation amounts invoiced by MCImetro Access Transmission Services LLC ("MCImetro").

As Verizon conceded and the New York Public Service Commission ("NYPSC" or "Commission") acknowledged in Case 99-C-0529, MCImetro's traffic is not subject to the Commission's Opinion No. 99-10 presumption.¹ This is because MCImetro's ratio of terminating-to-originating traffic does not exceed 3:1. Verizon has not contested this and, prior to the FCC's *ISP Remand Order*,² had not contested compensating MCImetro at the tandem (Meet Point B) reciprocal compensation rate.

Nevertheless, Verizon has disputed MCImetro's reciprocal compensation invoices since July 2001, relying upon the *ISP Remand Order*. Verizon has sent MCImetro the same form letter that it sent to WorldCom, Inc.'s ("WorldCom")

¹ NYPSC Case 99-C-0529, Proceeding on Motion of the Comm'n to Reexamine Reciprocal Compensation, Order Rejecting Pet. for Reconsideration (Dec. 24, 2001) at 2 ("There was no issue regarding MCI for Commission resolution since Verizon had not disputed compensating MCI at the tandem rate."); Order Rejecting Rebuttal Presentation (Feb. 1, 2001) at 6 ("[T]he reciprocal compensation arrangements in the MCI agreement . . . are not subject to the Opinion No. 99-10 presumption."); Comments of Verizon New York Inc. (Aug. 4, 2000) at 3 ("Verizon NY has not disputed any MCI bills on the basis of Opinion No. 99-10!").

² Order on Remand & Report & Order, In re Implementation of the Local Competition Provisions in the Telecomms. Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. Apr. 27, 2001) ("*ISP Remand Order*")

other local subsidiaries and presumably to many other carriers, disputing the amount that Verizon calculates to be the difference between the amount MCImetro billed and the amount that would be due if the *ISP Remand Order's* rates were applied to the traffic.

As you are aware, WorldCom and its subsidiaries have contested Verizon's interpretation of the *ISP Remand Order* and its application of that Order's intercarrier compensation rates to existing interconnection agreements. While we continue to dispute and contest Verizon's interpretation of the FCC's Order, that dispute is irrelevant to MCImetro in New York. For even if the *ISP Remand Order's* terms were somehow to alter the existing interconnection agreement between MCImetro and Verizon, only traffic exceeding a 3:1 terminating-to-originating ratio would be presumed to be Internet traffic, and MCImetro's New York traffic does not exceed that 3:1 ratio. Therefore there is no justification for Verizon's failure to pay the reciprocal compensation amounts that MCImetro has invoiced pursuant to the parties' interconnection agreement.

According to our records, Verizon owes MCImetro \$1,825,653.52 that is properly due for invoices dated July 10, 2001 through December 10, 2001. Furthermore, the partial payments that MCImetro did receive for these invoices were made exceptionally late. In addition, Verizon has not made any payment for invoices dated January 10, 2002 through March 10, 2002, which total \$2,177,762.68.

Under these circumstances, I am compelled to request that Verizon reconcile and bring current its account 212 DNY-0132 M00 by remitting to MCImetro the properly invoiced amounts that Verizon owes, plus the applicable late payment penalties, as soon as possible. If we have not received payment by April 22, 2002, and if I have not heard from you regarding this matter by then, we will have no choice but to pursue all measures available to enforce MCImetro's interconnection agreement and our rights thereunder.

Very truly yours,



Curtis L. Groves

Copies: Verizon New York, President – Telecom Industry Services
Michael J. Henry, Esq.

EXHIBIT 10

Verizon New York Inc.
1095 Avenue of the Americas
Room 3735
New York, NY 10036
Tel 212 395-6405
Fax 212 768-7568

Gayton P. Gomez
Regulatory Counsel



May 9, 2002

BY OVERNIGHT DELIVERY AND E-MAIL

Curtis Groves, Esq.
Senior Attorney, Public Policy, New York/New England Region
WorldCom
1133 19th Street, NW
Washington, DC 20036

Re: MCImetro Access Transmission Services LLC

Dear Curtis:

I am writing in response to your April 11, 2002 letter to Sandra Thorn relating to the reciprocal compensation obligations under the Interconnection Agreement ("Agreement") between Verizon New York Inc. ("Verizon") and MCImetro Access Transmission Services LLC ("MCImetro").

In your April 11 letter, you state that Verizon has underpaid reciprocal compensation due to MCImetro by applying the FCC's interim rate regime to MCImetro traffic that exceeds a 3:1 terminating-to-originating ratio. You claim that, contrary to Verizon's calculations, "MCImetro's New York traffic does not exceed that 3:1 ratio." In subsequent telephone conversations, you informed me that MCImetro believes that UNE-P traffic should be included in calculating the FCC's 3:1 ratio, basing this claim on statements made by Verizon in Case 99-C-0529, and stated that if UNE-P traffic was included, MCImetro's ratio would be below the 3:1 ratio.

At the outset, I should point out that despite Verizon's efforts, we have not been able to reach a written agreement with MCImetro to implement the FCC's *Order on Remand*. Any disagreement between the parties regarding the detailed procedures for calculating the 3:1 ratio mandated by the *Order in Remand* should be addressed in the context of the negotiation of a suitable conforming amendment. Until MCImetro is prepared to come to the table in good faith to reach agreement on an appropriate amendment, it will be difficult to resolve the issues you have raised.

Moreover, the issue of whether UNE-P traffic should be included in calculating the 3:1 ratio is largely beside the point. Under the *Order on Remand*, the 3:1 ratio is used

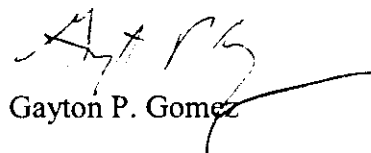
to establish a "rebuttable presumption" that traffic exceeding that ratio is "ISP-bound traffic subject to the compensation mechanism" set forth in that order. *See Order on Remand* ¶ 8. If we are unable to reach agreement on an appropriate way to deal with the billing issues, Verizon is prepared to show that the great majority of the compensable traffic terminating to MCImetro is internet-bound, and therefore, is subject to the interim compensation regime set forth in the *Order on Remand*. Indeed, Verizon will be able to show that inclusion of UNE-P bound minutes in the calculation of a billing ratio would inevitably lead to an overestimation of the amount of local traffic for which MCImetro is entitled to collect reciprocal compensation. Rather than force both parties to engage in a protracted fight over this issue, we believe it would be appropriate for the parties to come to a mutually agreeable understanding of how the *Order on Remand* can be implemented with a minimum of billing complications.

I should add that in the course of investigating MCImetro's claim, Verizon discovered a system error that may have caused Verizon to underpay MCImetro. As I stated in telephone conversations and my April 23, 2002 e-mail, if MCImetro will provide Verizon with MOU information in a standard EMI format, Verizon will be able calculate whether it owes MCImetro any compensation as the result of this system error.

In your April 11 letter, you also state that Verizon owes late payments for invoices dated July 10, 2001 through December 10, 2001, and has not made any payment for invoices dated January 10, 2002 through March 10, 2002. You are correct that the January through March invoices have not yet been paid. According to our records, the total undisputed balance due to MCImetro in New York for reciprocal compensation charges is \$1,542,811. The balance of the amounts invoiced by MCImetro has been disputed by Verizon New York. In the course of investigating your assertion, however, we have discovered that MCImetro is substantially in arrears to Verizon New York by an amount that is more than seventeen times the undisputed amount due to MCImetro. Late payment charges are also accumulating rapidly on this undisputed balance due from MCImetro in New York. According to our records, the total *undisputed* balance due from MCImetro, with late payment charges, is \$29,240,156. (Current charges outstanding for fewer than thirty days are not included in this figure.) It would not be reasonable to expect Verizon New York to release the funds in question in the face of an overdue, undisputed balance of this magnitude. Obviously, this is an extremely serious situation that requires immediate attention.

Please call me to discuss these issues, or if you have any questions.

Sincerely,


Gayton P. Gomez

cc: Sandra Dilorio Thorn, Esq.